

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE J.B.KOSHY

WEDNESDAY, THE 21ST MARCH 2007 / 30TH PHALGUNA 1928

CRL.A.No. 281 of 1998()

CC.47/1994 of JUDL.MAGISTRATE OF FIRST CLASS COURT-I,
KANNUR

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APPELLANT/COMPLAINANT:

M/S.SOUMYA SAREES,
BELLARD ROAD, KANNUR-1,
A PARTNERSHIP FIRM REPRESENTED BY ITS
MANAGING PARTNER GIRISH,
S/O.KUNJAMBU,
CHETTIPEEDIKA, KANNUR-4.

BY ADV. SRI.K.G.BALASUBRAMANIAN

RESPONDENT/ACCUSED:

P.S.MURUGAN,
KIZHAKKEN KOIL,
RAJA ROAD,
NILESHWARAM, KANNUR.

BY ADV. SRI.K.N.PADMAKUMAR

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD
ON 21/03/2007, ALONG WITH CRL.A.NO.287 OF 1998, THE
COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

J.B.KOSHY, J.

Crl. Appeal Nos.281 and 287 of 1998

Dated this the 21st day of March, 2007

Judgment

The appellant in these cases is conducting a wholesale cloth business at Bellard Road, Kannur in the name and style M/s.Saumya Sarees'. The accused is a retail seller and he used to purchase cloth from the said establishment. According to the complainant, accused purchased textile goods for Rs.50,285.60 and issued cheque dated 20.5.1993 for an amount of Rs.33,463.30 towards part payment of the above transaction. Since the cheque was dishonoured, he filed the complaint. Again, accused issued a cheque for Rs.5,000/- on 9.8.1993 as part payment towards the transaction and that cheque was also dishonoured. Hence, the complaint in C.C.No.266 of 1994 was filed. Accused again purchased goods on credit basis for Rs.66,560.30 and issued post dated cheque with date 11.4.1994 and that cheque was also dishonoured and the case was numbered as C.C.No.557 of 1994. Cases were tried jointly.

2. After going through the contentions, the trial court found that the allegations in C.C. No.47, 266 and 557 of 1994 were not proved, but, C.C.No.266 of 1994 was

allowed. Crl. Appeal No. 281 of 1998 was filed against C.C.No.47 of 1994 and Crl. Appeal No. 287 of 1998 was filed against C.C.No.557 of 1994.

3. It is true that in the reply notice, the accused admitted that there is a liability and submitted that the amount will be paid in instalment, but, the question is what is the amount due. According to the accused, the amount due was covered by the cheque in C.C.No.266 of 1994 and no further amount is due. If cheques were dishonoured earlier, complainant would not have given goods on credit against cheques. In any event, the account books were not produced to show the exact liability and it was also proved that only blank cheques were issued on each transaction and defence of the accused was that only after paying the amount further goods were purchased on credit is more probable. On the facts of the case it is not proved that cheques were issued for a legally enforceable debt since the account books were not produced. The above finding of fact is based on evidence by the Magistrate's court and I see no ground to interfere with the same in an appeal against acquittal of the accused.

4. When cheque is issued, under section 138 of the Negotiable Instruments Act, there is a presumption in favour of the holder of the cheque. But, that presumption is only a rebuttable presumption and accused can rebut the presumption by proving that he has cleared the liability and blank cheques issued are not for a legally enforceable debt. In this case, accused was able to convince the court that his version is believable. He used to purchase goods from the complainant in wholesale on credit and blank cheques were issued as security. When he again purchased goods, he cleared the past liability and purchased further materials on credit basis and when he was unable to pay the amount in the last transaction (C.C.266/1994) case was filed using blank cheques issued in earlier transaction also even though amount was already paid. When the liability is denied and accused proved a probable defence, presumption is rebutted and it is for the complainant to prove that the cheque is issued for a legally enforceable debt and for rebuttal of presumption burden of the the accused is only to prove a probable defence as held by the Supreme Court in M.S.Narayana Menon @ Mani v. State of Kerala and another ((2006) 6 SCC 39). Here, accused proved a probable version to rebut the presumption. Complainant did not prove account books etc. to show that

the story given by the accused is baseless. I see no ground to interfere with the order of acquittal passed by the trial judge as the findings are not perverse or illegal.

Appeals are dismissed.

J.B. KOSHY
(JUDGE)

vaa

J.B.Koshy, J.

Crl.A.Nos.281 & 287/98

Judgment

21-3-2007